

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

STEVEN E. SHIVALEC,

Plaintiff,

v.

Case No. 17-CV-1245

MILWAUKEE MIXED METAL CYCLES LLC, et al.,

Defendants.

ORDER

Both plaintiff Steven Shivalec and defendants have filed motions for summary judgment. Shivalec moves to strike defendants' reply filings in support of their motion for summary judgment. (ECF No. 57.) Specifically, he moves to strike Defendants' Response to Plaintiff's Proposed Findings of Fact (ECF No. 51), Declaration of Aaron Dekosky (Second) and related attachments (ECF No. 52), and Defendants' Reply Brief in Support of Defendants' Motion for Summary Judgment (ECF No. 53) as untimely pursuant to Civil Local Rule 56(b)(3). (ECF No. 57 at 1.) Shivalec also moves to strike as untimely and unauthorized a letter from defense counsel (ECF No. 56) filed in response to Shivalec's reply brief in support of his own motion for summary judgment. (ECF No. 57 at 1.)

A. Defendants' Reply Filings (ECF Nos. 51-53)

On August 24, 2018, the defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 31.) On September 20, 2018, Shivalec filed a brief opposing that motion (ECF No. 39), along with his proposed findings of fact (ECF No. 40). On October 8, 2018, defendants filed their reply filings. (ECF Nos. 51-53.)

Eastern District of Wisconsin Civil Local Rule 56(b)(3) provides:

A moving party may file within 14 days of the service of the opposing party's materials [in opposition] ... :

- (A) a reply memorandum;
- (B) a reply to any additional facts submitted by the opposing party ...; and
- (C) any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c) submitted in reply.

Since Shivalec filed his materials opposing defendants' summary judgment motion on September 20, 2018, defendants' materials in reply were due on October 4, 2018. *See* Fed. R. Civ. P. 6(a)(1). As such, defendants' reply filings were filed four days late.

The Court of Appeals for the Seventh Circuit has recognized that "a district court's 'decision whether to apply [a local] rule strictly or to overlook any transgression is one left to the district court's discretion.'" *Staniel v. Gramley*, 267 F.3d 575, 579 (7th Cir. 2001) (quoting *Litte v. Cox's Supermarkets*, 71 F.3d 637, 641 (7th Cir. 1995)) (alteration in original). The court finds no compelling reason to strike the defendants' reply filings.

The filings, while late, were not egregiously late, did not adversely affect the court's docket, and did not prejudice Shivalect. As such, Shivalect's motion to strike defendants' reply filings will be denied.


B. Defendants' Letter (ECF No. 56)

On October 9, 2018, defendants "felt compelled" to file a letter from their counsel in response to Shivalect's reply brief in support his motion for summary judgment "in order to correct an egregious misrepresentation of the facts." (ECF No. 60 at 3.) The letter states, "The plaintiff asserted in his reply brief that Milwaukee Cycles did not pay Shivalect's share of the withholding taxes (ECF 50 at 15) when in fact, Milwaukee Cycles did pay these taxes (ECF 56-1)." (*Id.* at 3-4.)

Eastern District of Wisconsin Civil Local Rule 56(b) does not authorize a party to file a response to an opposing party's reply brief, and defendants did not seek leave to file a memorandum "not authorized by the Federal Rules of Civil Procedure, these Local Rules, or a Court order" as Civil Local Rule 7(i) requires. As such, the court will exercise its discretion and grant Shivalect's motion to strike defendants' letter.

IT IS THEREFORE ORDERED that Shivalect's Expedited Motion to Strike Defendants' Untimely and Unauthorized Filings (ECF No. 57) is **granted in part** and **denied in part**. Shivalect's motion is **granted** as to defendants' letter in response to Plaintiff's Reply Brief in Support of His Motion for Summary Judgment (ECF No. 56) and is **denied** as to defendants' reply filings (ECF Nos. 51-53).

Dated at Milwaukee, Wisconsin this 30th day of November, 2018.


WILLIAM E. DUFFIN
U.S. Magistrate Judge